Waste Automation and Waste Management of Pennsylvania—Hauling Division, Division of Waste Management of Pennsylvania, Inc. ***and*** **Jesseca B. Rebuck, Petitioner and International Brotherhood of Teamsters, Local 115, AFL–CIO.** Case 4–RD–1559

July 14, 1994

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 14, 1993, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 56 for and 69 against the Union, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings[1] and recommendations as modified below.

We agree with the hearing officer's recommendation to sustain the Union's Objection 2, but only for the following reasons. The credible evidence established that ''not long after the decertification petition was filed,'' John Jones, the Employer's general manager of the waste hauling division, stated at a meeting attended by 25 employees ''that to stay competitive and to keep our jobs, it would be better if we didn't have the Union. If we didn't have the Union then they wouldn't have to close the doors.''

We find that this threat of plant closure constitutes objectionable conduct warranting setting aside the election.[2] *Glasgow Industries*, 204 NLRB 625 (1973); *General Electric Wiring Devices*, 182 NLRB 876 (1970).

In its exceptions the Employer contends that the impact of this threat on the election is de minimis in view of the circumstances under which it was made and the remoteness in time between the threat and the election. We disagree.

In determining whether certain conduct is de minimus, the Board takes into consideration the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Metz Metallurgical Corp*., 270 NLRB 889 (1984); *Caron International*, 246 NLRB 1120 (1979).

Examining these factors here, we find that the threat by Jones to close the facility in the event of a union victory cannot be deemed de minimus. As the Supreme Court has held, employees are ''particularly sensitive'' to threats of plant closure, and such threats are among the types of unfair labor practices which ''destroy election conditions for a longer period of time than others.'' *NLRB v. Gissel Packing Co*., 395 U.S. 575, 611 fn. 31 and 619–620 (1969). Further, the fact that the threat was made by Jones, one of the highest ranking officials of the Employer, served to heighten its severity.[3] *Cartridge Actuated Devices*, 282 NLRB 426, 428 (1986). In addition, the threat was made to 25 employees, nearly one-fifth of the unit. We regard this factor as particularly significant when viewed in light of another relevant factor, i.e., that the election was decided by fewer than 25 votes. See, e.g., *Hopkins Nursing Care Center*, 309 NLRB 958, 959 fn. 8 (1992). Finally, we note that Jones' postpetition threat was not isolated in nature. As noted above, Jones had previously made a similar threat of plant closure to an employee, and the credited evidence revealed that threats of plant closure were being disseminated among employees as late as 3 days before the election.[4]

Under these circumstances, we find that notwithstanding the passage of time between Jones' threat and the election, the threat constitutes objectionable conduct and we, accordingly, set aside the election and direct a new election.[5]

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[1] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co*., 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation to overrule the Union's Objections 1 and 6.

[2] In recommending sustaining the Union's Objection 2, the hearing officer also relied on Jones' threat in January or February 1992, before the decertification petition was filed, that the Employer could close if the Union ''[wound] up getting here.'' While under the Board's decision in *Ideal Electric Mfg. Co*., 134 NLRB 1275 (1961), this prepetition threat cannot, standing alone, be a basis for an objection, it may be considered where it ''adds meaning and dimension to related post-petition conduct.'' *Dresser Industries*, 242 NLRB 74 (1979).

[3] The Employer contends that its labor relations counsel, Jack Cassari, neutralized Jones' plant closure threat during the weeks preceding the election by telling the waste hauling employees that the Employer intended to remain open even if the Union won the election. We reject this contention because the purported cure was made by a different company official whose statements made no reference to Jones' earlier threat. Under these circumstances, we do not find that Cassari's statements lessened the coercive impact on employees of Jones' threat.

[4] In this regard, on May 11, 1994, employee Charlie Vile Sr. expressed to employee Joseph Fewtrell his fear that the plant would close if the Union won the election.

[5] We find it unnecessary to pass on whether the remaining conduct found objectionable by the hearing officer constitutes additional grounds for setting the election aside.

In setting aside the election, Member Devaney also agrees with the hearing officer's finding regarding the ''other objectionable conduct.''

ORDER

It is ordered that the election in this case is set aside and that this proceeding is remanded to the Regional Director for Region 4 to conduct a new election.

[Direction of Second Election omitted from publication.]